

# Memorandum

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Subject: CHDP, Family PACT and HIPAA Compliance

This is to confirm the information presented on October 25, 2002 to CHEAC concerning CHDP, Family PACT and HIPAA compliance.

The State CHDP program and Family PACT are health plans and therefore covered entities under HIPAA. HIPAA requires use of specified national standards for electronic claiming, claims payment, health plan enrollment and other enumerated electronic transactions. HIPAA also mandates national standards for code sets used in these electronic transactions.

The deadline for compliance with the federal regulations for electronic transactions and code sets under HIPAA has been extended for CHDP and Family PACT to October 16, 2003. However, neither CHDP nor Family PACT will be fully compliant by the federally imposed deadline. The problem in CHDP is that the CHDP subsystem of the mechanized claims processing system, known as CA-MMIS, is a stand alone system based on data collection requirements of the CHDP form PM-160 and is not HIPAA compliant. The PM-160 uses local procedure codes and also collects health information necessary for federal reporting on CHDP clients. Because of the need to make the larger CA-MMIS HIPAA compliant and other resource demands, such as CHDP Gateway, the CHDP subsystem will not be able to accept a HIPAA standard electronic health care claim transaction until some time after the federal deadline of October 16, 2003. It should be noted that only a small percentage, about 10%, of all CHDP claims are submitted electronically. The CHDP fiscal intermediary will continue to accept CHDP claims submitted either on paper PM-160 claim forms, or as electronic PM-160 transactions after October 16, 2003. Eventually, DHS intends to integrate the CHDP PM-160 subsystem into the general CA-MMIS. However, the data collection on the PM-160 required for EPSDT reporting is not accommodated by the HIPAA standard electronic

health care transaction, so an electronic attachment will be required. The federal government has not yet published a rule for electronic claims attachments under HIPAA.

The issue with Family PACT is that unique diagnosis codes are used for purposes of claims processing which will not be HIPAA compliant. These Family PACT "S-Codes" are necessary to restrict the benefit package and to monitor and evaluate the program. They are recognized in the federal Family PACT Medi-Cal waiver. Family PACT also utilizes Education and Counseling local codes to bill for these services, which are unique to California. They cannot be translated to the uniform national procedure codes mandated by HIPAA. Family PACT local codes will be reviewed and DHS may request that these codes be designated as new interim national codes.

DHS anticipates that it will be fully compliant with the Privacy Rule under HIPAA by the deadline of April 14, 2003. Federal regulations require DHS to have a privacy officer, to train employees on policies and procedures for handling protected health information, to issue a privacy notice, and to have appropriate safeguards in place to protect the privacy of this protected health information.

Although neither CHDP nor Family PACT will be HIPAA compliant with standard codes and transactions by the federal deadline, there is little risk of a provider being fined for submitting a non-compliant claim to these programs. While the HIPAA statute contains a civil money penalty provision, there is a waiver of the penalty if the failure to comply was due to reasonable cause and not to willful neglect of the health care provider. Also, DHHS has recently announced publicly that it will deal with enforcement of the HIPAA code sets and transactions standards after the compliance deadline by giving non-complying entities a chance to file corrective action plans, rather than by sanctions. According to the Centers for Medicare and Medicaid Services, the enforcement strategy will emphasize technical assistance and not interfering with provider payments.

With the current year budget, DHS has funding for HIPAA once again, is staffing up, and re-entering contracts for HIPAA services. We will be actively working toward compliance. If you have questions, comments, or concerns, please contact Michelle Marks, who is the new Chief of the Office of HIPAA Compliance within DHS at (916) 255-6082, e-mail at [mmarks@dhs.ca.gov](mailto:mmarks@dhs.ca.gov).